

**REMARKS UNDER 37 CFR § 1.111**

**Formal Matters**

Claims 1, 12-13, 46, 53, 58, 190-192 and 194-216 are pending after entry of the amendments set forth herein.

Claims 1, 12-13, 46, 53, 58, 190-192 and 194-216 were examined. Claims 1, 12-13, 46, 53, 58, 190-192 and 194-216 were rejected.

Applicants respectfully request reconsideration of the application in view of the amendments and remarks made herein.

No new matter has been added.

**The Office Action**

**Claims Rejected Under Nonstatutory Double Patenting (U.S. Patent No. 6,743,169)**

In the Official Action of April 24, 2007, claims 1, 12-13, 53, 58, 190-192 and 194-214 and 216 were rejected on the ground of nonstatutory double patenting over claims 1-4, 6-13, 17, 20-26, and 31-32 of U.S. Patent No. 6,743,169, since the Examiner considered the currently claimed subject matter to be fully disclosed in the patent and covered by the patent since both the application and patent are claiming common subject matter, and the difference between the application claims and the patent claims is that the patent claims include more elements and are thus more specific.

Although Applicants do not agree with this ground of rejection and do not acquiesce thereto (for example, claim 1 of the present application recites means for introducing a positive or negative fluid pressure, while claim 1 of the patent recites that the means exerts a mechanical stabilizing force on the exterior of the heart, and the means for introducing a positive or negative pressure is not more specific, since it does not recite fluid pressure), Applicants respectfully submit that a terminal disclaimer disclaiming any period of protection that may otherwise extend beyond the patent period of U.S. Patent No. 6,743,169 was submitted along with the amendment filed on December 19, 2006 in this case, in response to the Final Office Action dated October 10, 2006. The Examiner is respectfully requested to enter that Terminal Disclaimer if, for some reason it has not already been entered. If the Examiner did

not receive the Terminal Disclaimer, the Examiner is requested to contact the undersigned at 408-736-3554, and a copy of the Terminal Disclaimer and filing documentation evidencing the filing of the terminal disclaimer will be submitted.

In view of the above comments and the terminal disclaimer which has already been filed, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 1, 12-13, 53, 58, 190-192 and 194-214 and 216 on the ground of nonstatutory double patenting over claims 1-4, 6-13, 17, 20-26, and 31-32 of U.S. Patent No. 6,743,169 as being moot.

**Claim Rejected Under Nonstatutory Obviousness-Type Double Patenting (U.S. Patent No. 6,743,169 in view of Vierra et al.)**

Claim 46 was rejected on the ground of nonstatutory obviousness-type double patenting over claim 1 of U.S. Patent No. 6,743,169 in view of Vierra et al., U.S. Patent No. 5,749,892.

For at least the reasons provided above, Applicants do not agree with this ground of rejection and do not acquiesce thereto.

In view of the above comments and the terminal disclaimer which has already been filed, the Examiner is respectfully requested to reconsider and withdraw the rejection of claim 46 on the ground of nonstatutory obviousness-type double patenting over claim 1 of U.S. Patent No. 6,743,169 in view of Vierra et al., U.S. Patent No. 5,749,892, as being moot.

**Claim Rejected Under 35 U.S.C. Section 102(a) (Green et al.)**

Claim 215 was rejected under 35 U.S.C. Section 102(a) as being anticipated by Green et al., U.S. Patent No. 5,620,458. In view of the above amendment of claim 215, Applicants respectfully request the Examiner to reconsider and withdraw this ground of rejection. Claim 215 has been amended above to further recite that the continuous length is of a wire of shape memory material. Support for this amendment can be found, for example, at paragraphs [0133] and [0134] of the present specification. Column 7, lines 45-46 of Green et al. disclose that the spreading members 560/arms 562 are formed by cutting a channel 563 in a sheet of resilient material.

In view of the above amendment and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claim 215 under 35 U.S.C. Section 102(a) as being anticipated by Green et al., U.S. Patent No. 5,620,458, as being no longer appropriate.

**Conclusion**

Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

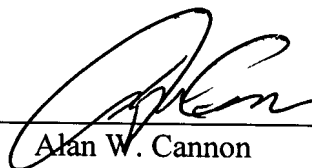
The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-2653, order number GUID-005CON6.

Respectfully submitted,  
LAW OFFICE OF ALAN W. CANNON

Date: \_\_\_\_\_

7/20/07

By: \_\_\_\_\_



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